

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ROBERT SHAYNE KINSLOW,

v.

DIRECTOR, TDCJ-CID,

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CIVIL ACTION NO. 5:17-CV-00171-RWS-CMC

ORDER

Petitioner Robert Shayne Kinslow, a prisoner currently confined at the Michael Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket No. 1). The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. On November 4, 2020, the Magistrate Judge issued a Report and Recommendation recommending denial of the petition for writ of habeas corpus (Docket No. 24).

The Court has received and considered the Report and Recommendation of the Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge have been filed by the parties. Because no objections to the Magistrate Judge's Report have been filed, neither party is entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, they are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C § 636(b)(1)(C); *Douglass v. United Services Automobile Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

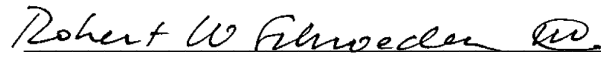
Nonetheless, the Court has reviewed the motion and the Magistrate Judge's report and agrees with the report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants.’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. The petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is therefore **DENIED**.

Furthermore, the Court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, petitioner has not shown that any of the issues would be subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed

further. Therefore, the petitioner has failed to make a sufficient showing to merit the issuance of certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 15th day of December, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE